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FINANCIAL INSTITUTIONS
REGULATORY AND INTEREST RATE CONTROL
ACT OF 1978.

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Reported (S. Rept. 95-844), S7461.
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Reported with amendments (S. Rept. 95-1039), S11856.
Debated, S16611, S16613, S16627, S16633, S16634, S16644, S16645, S16703, S16770, S16780, S16783, S16808, S16817, S16827, S16836, S16846, S16856.

HOUSE CALENDAR HISTORY

H.R. 14279 (H. Res. 1439) (S. 3499).—Depository institutions, interest rates on deposits and accounts in, flexible regulation of, extend to Dec. 15, 1979. Committee discharged. Passed House Oct. 11, 1978. In Senate, referred to Banking, Finance and Urban Affairs Oct. 11, 1978. Committee discharged. Passed Senate amended Oct. 12 (*Legislative day of Oct. 11*), 1978. House agreed to Senate amendments with an amendment under suspension of the rules Oct. 15 (*Legislative day of Oct. 14*), 1978. Senate agreed to House amendment Oct. 15 (*Legislative day of Oct. 11*), 1978. Approved Nov. 10, 1978. Public Law 95–630.

H. Res. 1439 (H.R. 14279).—Depository institutions, interest rates on deposits and accounts in, flexible regulation of, extend to Dec. 15, 1978, agree to Senate amendments with amendments. Rules suspended. Passed House Oct. 15 (*Legislative day of Oct. 14*), 1978.

H.R. 13471 (H. Res. 1333) (S. 71) (See H.R. 14279).—Financial Institutions Regulatory Act of 1978. Reported from Banking, Finance and Urban Affairs July 20, 1978; Rept. 95–1383. Union Calendar------ ----------Union 753

H. Res. 1333 (H.R. 13471).—Financial Institutions Regulatory Act of 1978, consideration of. Reported from Rules Sept. 6, 1978; Rept. 95–1536. House Calendar. Passed House Sept. 29, 1978.

H.R. 13007 (H. Res. 1278).—Electronic Fund Transfer Act. Reported from Banking, Finance and Urban Affairs June 21, 1978; Rept. 95–1315. Union Calendar. Passed House Aug. 11, 1978. Ordered placed on the calendar Aug. 14 (*Legislative day of May 17*), 1978.

H. Res. 1278 (H.R. 13007).—Electronic Fund Transfer Act, consideration of. Reported from Rules July 19, 1978; Rept. 95–1378. House Calendar. Passed House Aug. 11, 1978.

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H.R. 12157 (H. Res. 1168) (S. 3077).—Export-Import Bank, 5-year extension of, increased financing commitment for and, provide. Reported from Banking, Finance and Urban Affairs May 4, 1978; Rept. 95–1115. Union Calendar. Passed House July 27, 1978. In Senate, ordered placed on the calendar July 28 (*Legislative day of May 17*), 1978.

H. Res. 1168 (H.R. 12157).—Export-Import Bank, 5-year extension of, increased financing commitment for and, provide, consideration of. Reported from Rules May 9, 1978; Rept. 95–1119. House Calendar. Passed House June 1, 1978.

S. 3499 (H.R. 14279).—Depository institutions, interest rates on deposits and accounts in, flexible regulation of, extend. Reported in Senate Oct 4 (*Legislative day of Sept. 28*), 1978; Banking, Housing, and Urban Affairs; Rept. 95–1273.

S. 3156.—Electronic fund transfer systems, consumer rights and safeguards in, provide. Reported in Senate May 26 (*Legislative day of May 17*), 1978; Banking, Housing, and Urban Affairs; Rept. 95–915. Ordered placed on the calendar May 26 (*Legislative day of May 17*), 1978.

S. 3077 (H.R. 12157).—Export-Import Bank Act Amendments of 1978. Reported in Senate May 15 (*Legislative day of Apr. 24*), 1978; Banking, Housing, and Urban Affairs; Rept. 95–844. Referred to Environment and Public Works May 23 (*Legislative day of May 17*), 1978. Reported July 26 (*Legislative day of May 17*), 1978; Rept. 95–1039.

S. 2055.—Consumers Financial Services Act of 1977. Reported in Senate Aug. 18 (*Legislative day of July 19*), 1977; Banking, Housing, and Urban Affairs Rept. 95–407.

S. 71 (H.R. 13471).—Financial Institutions Supervisory Act Amendments of 1977. Reported in Senate June 30 (*Legislative day of May 18*), 1977; Banking, Housing, and Urban Affairs; Rept. 95–323. Passed Senate Aug. 5 (*Legislative day of July 19*), 1977. In House, referred to Banking, Finance and Urban Affairs Sept. 7, 1977.

Senate Report

95-915

Calendar No. 852

95TH CONGRESS
2d Session

SENATE

REPORT
No. 95-915

FAIR FUND TRANSFER ACT

REPORT

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 3156

TOGETHER WITH

ADDITIONAL VIEWS

MAY 26 (legislative day, MAY 17), 1978.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
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95TH CONGRESS 2d Session | SENATE | REPORT No. 95-915

FAIR FUND TRANSFER ACT

MAY 26 (legislative day, MAY 17), 1978.—Ordered to be printed

Mr. RIEGLE, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 3156]

The Committee on Banking, Housing, and Urban Affairs, having considered the same, reports favorably a committee bill (S. 3156) to provide for consumer rights and safeguards in electronic fund transfer systems and recommends that the bill do pass.

INTRODUCTION

The committee had referred to it three bills to provide for consumer rights and remedies in electronic fund transfer systems: S. 2065, introduced by Senator Riegle; S. 2470, introduced by Senators Tower and Schmitt; and S. 2546, introduced by Senators Riegle and Proxmire.

The Consumer Affairs Subcommittee held hearings on these bills on October 2, 4, and 5, 1977, and February 24, 1978. The committee considered the legislation in markup sessions on March 15, April 4, 7, 10, 14, 17, 27, and May 1, 1978. On April 27, 1978, the committee ordered a committee bill reported to the Senate by a vote of 8–2.

NATURE AND PURPOSE OF THE BILL

This bill would add a new title to the Consumer Credit Protection Act entitled the "Fair Fund Transfer Act". Its purpose is to provide for consumer rights and safeguards in electronic fund transfer systems and to create a framework defining the liabilities and responsibilities of all participants in electronic fund transfers.

Need for the Legislation

Electronic fund transfer (EFT) systems are a variety of relatively new banking and payment services whose central characteristic is their utilization of computer and electronic technology in place of checks or other paper items.

There are four principal types of EFT services available to consumers today: automated teller machines, also known as 24-hour tellers, which enable consumers to perform a variety of banking transactions at almost any hour of the day or night; pay-by-phone systems, which permit a consumer to telephone his bank and order payments to third persons or a transfer between accounts; direct deposits and automatic payments, through which wages or social security benefits are automatically deposited in a consumer's bank account or regularly recurring payments, like utility bills or insurance premiums, are automatically deducted; and point-of-sale transfers, which enable a consumer, through use of a computer terminal at a retail establishment, to transfer money instantaneously from his bank account to the merchant's.

The committee believes that this new generation of financial services offers the public significant new choices in personal banking and has the potential to be of great benefit to consumers. For example, by permitting a consumer to deposit or withdraw money from his bank account through the use of an automated teller machine at the time of his choosing, routine banking can be far more convenient. Direct deposit of payroll or government benefits gives the consumer quicker access to his money than is now the case for checks, which often take several days to clear the checking system, and eliminates the danger of theft or delay in the mails. Some EFT services already offer substantial cost savings. For example, many pay-by-phone services impose a transaction fee for each payment which is less than the consumer would pay for postage to mail a check. In short, EFT can provide greater convenience, lower cost, increased security, and more efficient services.

While EFT services are relatively new, their use by consumers is growing rapidly, and they are now a significant factor in our payments system. For example, there are now 8,000 automated teller machines in operation nationally, each averaging 2,000 transfers per month. Thus, automated teller machine activity alone now accounts for approximately 200 million electronic fund transfers annually, and the number of automated teller machines deployed in 1977 was double that of 1976. Approximately 100 financial institutions now offer pay-by-phone services—three times the number of a year ago. In 1977, the Treasury Department electronically deposited over 60 million social security and elderly income maintenance payments. In short, EFT services are young, but they already play a major role in our Nation's payments system and clearly are growing in importance daily.

As with many new developments in data communications, however, the substantial benefits which EFT promises are accompanied by a broad range of new policy questions. Chief among these issues is the rights and liabilities of the consumer who uses an EFT service.

These questions are particularly acute because existing state laws covering checks and Federal consumer protection laws governing

credit cards were not drafted with EFT in mind, leaving the rights of consumers, as well as financial institutions and retailers, undefined in the law.

This uncertainty leaves many important questions concerning the consumer's rights, liabilities, and responsibilities in EFT systems unanswered. For example, what is the consumer's liability if his EFT card is lost or stolen and his bank account is subsequently emptied? What is a financial institution's liability to its customer if it fails to make a payment when ordered or pays the wrong amount? What records should the consumer receive in these essentially paperless systems? What are the parties' liabilities in the event of a technical malfunction? And what obligation does a financial institution have to investigate and correct errors promptly?

Because of these and other unanswered questions and the rapid growth of EFT, the committee believes the Congress should enact an "EFT Bill of Rights" for consumers which addresses these issues. This was the key recommendation of the National EFT Commission in its final report to the Congress in October, 1977.

There are many providers of EFT services who believe that legislation in this area is premature and that EFT should be left to develop in the marketplace without regulation. The committee agrees that it is desirable to minimize regulation of EFT at this time, but it also believes that EFT payment systems, which now involve billions of dollars annually and are growing in size, must have clearly defined rules to operate fairly, efficiently, and with public confidence. Moreover, the committee believes this legislation will provide the dual benefits of allaving legitimate consumer concerns and providing a clear picture to EFT providers of what their liabilities would be, enabling them to make more informed decisions on participating in EFT systems.

The purpose of this legislation is to provide a framework of rights, responsibilities, and liabilities for participants in EFT systems without imposing unnecessary restrictions on the continued development of these services. Its principal purpose, however, is the creation of substantive consumer rights. The bill addresses the issues of full disclosure of EFT account terms, adequate records for the consumer, consumer liability for unauthorized transfers, the financial institution's liability for wrongful payments, prompt error correction, and issuance of EFT "debit" cards.

Explanation of the Legislation

Scope of the act

This bill applies to four common EFT services: automated teller machine transactions, such as cash withdrawals or deposits or transfers between accounts; pay-by-phone services, in which a consumer orders his financial institution to make payments to another; point-of-sale systems, where funds are transferred from a consumer's account to a merchant's through use of a computer terminal at the merchant's place of business; and automated clearing house transactions through which a consumer's account is automatically debited for a recurring payment, like insurance premiums, or is regularly credited with wages, pension benefits, and the like. Each of these EFT transactions is initiated and carried out primarily by electronic means.

There are several banking services which the bill does not cover. It specifically excludes: check guarantee and authorization services, unless they directly result in a debit to the consumer's bank account; traditional "wire" transfers between banks; and any transaction whose principal purpose is the purchase or sale of securities. The bill also excludes check truncation systems in which paper checks or drafts are routed or processed electronically.

Today's EFT systems access a consumer's bank account, but many people believe that EFT services may soon access other types of asset accounts. For example, a mutual fund could issue an EFT card which would draw on the consumer's fund shares. Each time the card would be used, the fund could instantaneously redeem shares necessary to cover a payment and transfer the funds to the payee. Another example of an asset account which could be accessed by EFT is a positive balance in a consumer's margin account at a stock brokerage. In order to assure that all equivalent EFT services are subject to the same standards, the bill would cover EFT systems which access traditional bank accounts as well as other types of asset accounts.

In addition to providing access to varied types of accounts, EFT services are likely to be offered by entities other than banks in the near future. For example, the current issuers of travel and entertainment cards may eventually gain access to EFT networks operated by banks. In that case, a consumer could use a travel and entertainment card to pay for goods or services, but instead of receiving a monthly bill, the card would directly withdraw funds from the consumer's bank account. To provide equal coverage, the bill requires the Federal Reserve Board to assure that the bill's requirements are by regulation made applicable to non-bank EFT providers if such entities offer EFT services in the future.

Disclosure of account terms

The committee believes it is essential that users of EFT services be meaningfully informed as to the terms and conditions governing such services. Consumers are not generally familiar with the terms of EFT services and should be informed as to how these services will affect their funds on deposit in a bank. Accordingly, the bill requires disclosure of account terms at the time a consumer arranges for an EFT service. To assure that the disclosures are meaningful, the bill requires that they be made in readily understandable language. To facilitate compliance with this requirement, the Federal Reserve Board is required to promulgate model clauses for standard disclosures. While use of such clauses would be optional, a financial institution which utilized an appropriate model clause would be assured of compliance with the act's requirements.

While the bill does not specifically require disclosure of each and every account term or condition, it requires disclosure of at least nine items which the committee believes are of central importance. These include: the consumer's liability in the event an EFT card is lost or stolen; who to call if this occurs; the type of transactions the consumer can initiate; any charges for transfers; the consumer's right to prompt error correction; and what account information the financial institution will disclose to third persons.

In the event any term or condition of an account is changed by a financial institution, the bill requires written notice to the consumer at least 21 days in advance.

Transaction records

While much of EFT's cost-saving characteristics are attributable to the lack of paper involved, accurate and meaningful records of account activity are essential for the consumer. This is particularly necessary because no equivalent of the cancelled check or credit card receipt will be available to verify or prove EFT transactions.

To meet this need, the bill requires that financial institutions provide the consumer with periodic statements detailing all EFT account activity. Each EFT transaction would be itemized so the consumer could identify the amount, date, and type of transfer as well as the designated payee.

In addition to monthly statements, the bill would require that receipts be made available to consumers for all EFT transactions initiated at an electronic terminal, such as an automated teller machine or EFT terminal at a store's check-out counter. These receipts, like the periodic statements, would give the consumer written verification of the amount, date, and type of transfer and the person paid.

In order to provide the user of EFT services with evidence of payment on which he can rely, the bill provides that periodic statements and receipts required by the act shall constitute prima facie proof of payment. Thus, a receipt or statement indicating payment to a third party by means of EFT would provide the same proof of payment for the consumer as a cancelled check for income tax or other purposes.

Finally, the bill provides an important protection for consumers who receive payments, like wages or government benefits, through direct EFT deposit into their bank accounts. Because many employers or receiving banks do not provide a consumer with notification that his deposit was made as scheduled, an error could occur without the consumer's knowledge and leave the consumer's bank account empty or with insufficient funds to cover outstanding checks. To assure against this, the bill requires a system of notice to the consumer so he is informed if the expected payment is not made or received as scheduled. This will alert the consumer if an error has occurred and enable him to correct it promptly.

Protection from unauthorized use

Perhaps the most important protection contained in this bill is a limit on consumer liability in the event a consumer's EFT card is lost or stolen and his bank account is drained.

Several EFT systems today (particularly automated teller machines) permit a consumer to access his bank account by inserting a plastic "debit" card into an electronic terminal and punching in a secret access code. Once this two-step process is completed, the consumer may withdraw cash from his bank account. While this procedure presents a reasonable degree of security in terms of today's technology and its cost, a thief who stole a consumer's card and learned his access code could nonetheless quickly and easily empty the consumer's bank account. Moreover, the face-to-face contact involved in passing a forged check or using a stolen credit card does not act as a deterrent in the EFT context because in most instances the thief needs only to utilize a computer terminal to withdraw a consumer's money.

Because of the unique risks which card-actuated EFT systems present in this respect, protecting the consumer from serious loss is of central importance. The committee has adopted a formula, similar to that applicable to credit cards since 1969, which limits a consumer's liability to a maximum of $50 for an unauthorized transfer. Should the consumer notify his financial institution that his card and code were lost or stolen before $50 is withdrawn, however, the consumer's liability would be the amount withdrawn up to the time of notice.

Determining what standards to apply in this area is a difficult issue which involves several questions of public policy. The committee believes the $50 ceiling approach contained in the bill is the best resolution of these issues for several reasons. First, by making the consumer liable for the first $50 withdrawn, the consumer has a financial incentive to guard his card and code carefully and to report any loss or theft promptly. By requiring the financial institution to absorb the remainder of any loss, the financial institution has an incentive to provide a secure EFT system. The committee believes this is an appropriate assignment of risks since the financial institution has established the EFT system and has the ability to tighten its security characteristics.

The committee was also impressed with the experience of the $50 liability limit made applicable to credit cards in 1969 by the Truth in Lending Act. This provision has successfully limited consumer liability for lost or stolen credit cards while also promoting careful credit card handling and prompt notice of loss by consumers. Based on this experience, as well as favorable data in the seven States (Wisconsin, Iowa, Colorado, Minnesota, Montana, New Mexico, and Kansas) which recently have adopted a similar provision for EFT, the committee concluded that a $50 liability ceiling was a workable and proven standard.

Finally, the committee also took into account the likelihood that in 5 to 10 years, automated teller machines may no longer be activated by a card and access code, but by more positive identification systems like voice or finger print recognition or signature verification. These systems would greatly lessen, if not eliminate, the danger of unauthorized account access. Until the introduction of this technology, however, the committee believes a liability standard which provides certainty against total loss to the consumer is of crucial importance.

In deliberating this issue, the committee considered, but rejected, a standard which would determine the consumer's liability on whether the consumer acted in a specified negligent manner. While this approach has the attribute of specifically requiring careful conduct by the consumer, the committee believes it presents considerable problems, such as the vagueness of the standards, how to prove that the consumer (and not a thief) engaged in the proscribed conduct, and the potential for widespread litigation over these points which would leave the consumer without his funds while these questions are before the courts. For these reasons, the negligence approach was rejected.

Error resolution

Prompt investigation and correction of account errors is of crucial importance in EFT for several reasons. First, because most EFT systems rely totally on computers and electronics, errors are bound

to occur, particularly at this relatively early stage of development. But more important, a consumer is likely to discover an EFT error only after it has occurred, meaning that outstanding checks on a checking account might be dishonored or, even worse, the consumer left without money to meet his essential expenses like rent, utility bills, and groceries.

The key question in this area is what period of time a financial institution should have to make necessary corrections. The Fair Credit Billing Act, enacted by Congress in 1974, provides for up to 90 days to correct a credit card billing error. The committee found this period of time far too lengthy in the EFT context because while a credit error simply results in an erroneous bill (which the consumer is free not to pay), an EFT error means that money has already been wrongfully withdrawn from the consumer's bank account.

The committee believes that 10 business days (the equivalent of 2 weeks) is the maximum period of time the consumer should be without his funds and that this period provides an adequate opportunity for the consumer's financial institution to investigate and correct an error in nearly all cases. In order to provide added flexibility, the bill would permit a financial institution to take up to 45 days to resolve a dispute, provided it provisionally recredits the consumer's account for the amount in controversy within 10 business days. The consumer would have full use of the funds recredited during this period.

Other provisions

There are several other provisions of the bill which provide significant consumer protections.

First, the bill establishes standards of liability for a financial institution which fails to make a transfer as ordered, transfers the wrong amount, or fails to stop payment on a preauthorized transfer when ordered by its customer. Under these circumstances, the financial institution would in most cases be liable for all proximate damages, except where its action or omission resulted from a technical malfunction beyond its control. This standard is similar to a bank's current liability under the law of checking.

In addition, the bill places restrictions on the unsolicited issuance of EFT cards and access codes. A financial institution would be permitted to mail unsolicited EFT cards to consumers but could activate the card and code only on the consumer's request. The committee believes this middle ground between a flat prohibition on unsolicited mailings and totally unrestricted distribution strikes a proper balance which will permit financial institutions to establish an adequate card base while also assuring that a consumer's bank account is protected from unauthorized access by a thief who intercepts the consumer's mail.

The bill also contains a provision designed to assure that EFT develops in an environment of free choice for the consumer. A creditor could not condition the extension of credit on a consumer's agreement to repay by automatic EFT payments. Also, an employer or government agency could not require a consumer to open an account with a particular financial institution in order to receive EFT deposits.

Finally, the act would be enforced by means of civil and criminal liability, as well as administrative action. A consumer subjected to a violation of the act could recover actual damages, a minimum penalty of $100, and attorney's fees and costs.

Cost of the Legislation

In the committee's opinion enactment of this bill would result in no significant additional cost to the government.

The Congressional Budget Office analysis of this bill is contained in the following letter:

Congressional Budget Office,
U.S. Congress,
Washington, D.C., May 22, 1978.

Hon. William Proxmire, *Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.*

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed the Fair Fund Transfer Act as ordered reported April 27, 1978, by the Senate Committee on Banking, Housing, and Urban Affairs. This bill would amend the Consumer Protection Act to specify the rights and responsibilities of participants in electronic funds transfer systems.

Based on this review, it appears that no significant additional cost to the government would be incurred as a result of enactment of this bill.

Sincerely,

Alice M. Rivlin, *Director.*

Section-by-Section Summary

Section 901

The act may be cited as the "Fair Fund Transfer Act."

Section 902—Findings and purpose

The committee finds that the use of electronic systems to transfer funds offers the potential for substantial benefits to consumers, but because the application of existing consumer protection laws to EFT is unclear, the rights and liabilities of consumers who utilize these systems are undefined in the law. The purpose of the bill is to provide a basic framework establishing the rights and remedies of all parties to electronic fund transfers. Its principal purpose, however, is the provision of consumer rights.

Section 903.—Definitions

The term "electronic fund transfer" is defined to include any transfer of funds, other than a transaction originated by paper check or draft, which is initiated through an electronic terminal, telephone, or computer or magnetic tape so as to order a financial institution to debit or credit an account. This definition includes the following four common EFT services: automated teller machine transactions; pay-by-phone systems; point-of-sale transfers; and automated clearing house transactions, such as direct deposit of funds or automatic bill payments.

This definition excludes check authorization or guarantee systems which do not directly result in a debit to the consumer's account, traditional "wire" transfers between banks, and transactions the primary purpose of which is the purchase or sale of securities. This exception would exclude from coverage a telephone order to a stock broker specifically to buy or sell securities, but would not exclude a payment system whereby stock or mutual fund shares were liquidated by agreement as a secondary consequence of ordering a transfer of funds.

The definition of "electronic fund transfer" is intended to give the Federal Reserve Board flexibility in determining whether new or developing electronic services should be covered by the act and, if so, to what extent. For example, two bank regulatory agencies recently approval regulations permitting the automatic transfer of funds from a savings account to a checking account when a consumer's checking account balance reaches a predetermined level. Whether this service should be covered by the act requires a determination of whether such transfers will be initiated electronically, whether current laws provide adequate consumer safeguards, and whether coverage is necessary to achieve the act's basic objectives. This delegation of authority to the Board is an important aspect of this legislation as it would enable the Board to examine new services on a case-by-case basis and would contribute substantially to the act's overall effectiveness.

The term "account" is defined to mean traditional depository accounts as well as other asset accounts established for personal, family, or household purposes. Examples of asset accounts which would be covered are money market mutual fund accounts and positive balances in margin accounts at a stock brokerage. An occasional or incidental credit balance in open end (revolving charge) account would not be covered. as transactions in these accounts are now subject to the requirements of the Truth in Lending Act. Accounts held by a financial institution pursuant to a bona fide trust agreement would also be excluded.

The term "financial institution" is defined to mean traditional depository institutions as well as any other person who directly or indirectly holds a consumer's account. Thus, a money market mutual fund holding a consumer's share account would be defined as a financial institution.

The definitions of "financial institution" and "account" are deliberately broad so as to assure that all persons who offer equivalent EFT services involving any type of asset account are subject to the same standards and consumers owning such accounts are assured of uniform protection.

Section 904.—Regulations

This section authorizes the Federal Reserve Board to promulgate regulations to carry out the act's purposes. The Board is specifically required to assure that these regulations allow for the introduction and development of new EFT services and technology.

In addition to regulations, the Board is required to promulgate model disclosure clauses which financial institutions may use when disclosing the terms and conditions of an EFT service under section 905. Use of these clauses would be optional, but a financial institution which utilized the proper model clause would be assured of compliance with the act by virtue of section 915(d)(2).

This section also provides that if EFT services are in the future offered by persons other than a financial institution holding a consumer's account, the Board shall by regulation assure that the act's requirements and remedies are made applicable to such services and service providers. For example, the issuers of travel and entertainment cards may in the future gain access to an EFT network. In such cases, a consumer could use his travel and entertainment card to access his bank account directly. This provision will assure equal coverage and full application of the act's protections.

The committee regards regulations as essential to the act's effectiveness. These regulations will add flexibility to the act by permitting the Board to modify the act's requirements to suit the characteristics of individual EFT services. Moreover, since no one can forsee EFT developments in the future, regulations would keep pace with new services and assure that the act's basic protections continue to apply. While the committee appreciates the concern that a body of regulations would add to complexity and cost, the committee believes these potential drawbacks are more than offset by the flexibility for further technological development that regulations would permit.

Section 905.—Terms and conditions of transfers

This section provides for the disclosure of terms and conditions of an EFT service, in accordance with regulations of the Board, at the time a consumer contracts for such a service. These disclosures must be made in readily understandable language of either the financial institution's choosing or by use of model clauses promulgated by the Board pursuant to section 904 (b).

This section does not require disclosure of virtually each and every term and condition of an EFT service. Rather it leaves to the Board's regulations the full extent and timing of disclosure for individual EFT services. The bill does, however, require that the consumer be told at least the following key terms, as applicable to the EFT service involved: the consumer's liability for unauthorized transfers; who to call if an EFT card is lost or stolen; the types of transfers the consumer can initiate; any charges for transfers; the consumer's right to stop payment on pre-authorized transfers; the consumer's right to receipts and periodic account statements; the consumer's right to prompt error correction and how to initiate a correction; the financial institution's liability for wrongful payments; and under what circumstances the financial institution will disclose account information to others.

In addition, the committee intends for the Board's regulations to provide meaningful summaries of account terms so the resulting disclosure form is reasonably concise. Attached with this report are two sample disclosure forms prepared by the Federal Reserve Board's staff to illustrate what disclosure forms prepared in accordance with this act would resemble. Exhibit A is a sample disclosure form for an EFT "debit" card service which could be used in automated teller machines and point-of-sale terminals. Exhibit B is a sample disclosure form which would be provided to consumers who have their wages or social security benefits deposited automatically. While final regulations of the Board might result in some modifications, both the committee and the Board's staff consider these good examples of the form of EFT disclosures required by this bill.

EXHIBIT A

Information About Your XYZ Card

Account # _____

1. HOW TO CONTACT US

To contact us about your account, call or write:

XYZ Bank
P.O. Box 000
Anytown, Ohio 44000
(444) 666-8888

2. YOUR LIABILITY FOR UNAUTHORIZED TRANSFERS

If your XYZ card is lost or stolen or a transfer you did not authorize occurs, your loss will be no more than $50. However, if a transfer you did not authorize appears on your monthly statement, and you fail to contact us within 60 days after the statement was mailed to you, we need not reimburse you for any losses occurring after those 60 days that could have been prevented by your contacting us. For your own benefit, contact us AT ONCE if your card is lost or stolen.

3. ERRORS

If you believe that there is an error in a transfer shown on any of the account statements or receipts that you receive, call or write us within 60 days after the statement or receipt was sent to you. Give us your name and account number, an explanation of the error, and the amount of money involved. We will look into the matter, and will try to call or write you with an answer within 10 business days. If our investigation takes longer, we will credit your account within those 10 business days with any amount that you believe to be in error, and will correct any error no later than 45 days after you first contacted us. If we conclude that no error occurred, you will receive an explanation from us and, if you ask, we will also send you copies of all records we relied on in reaching our conclusion.

4. USE OF XYZ CARD

You may use your card to:

a. Withdraw cash from your checking or savings account.
b. Deposit money in your checking or savings account.
c. Pay a credit card bill.
d. Transfer money to a merchant from your checking account.

5. LIMITS ON USE

Cash withdrawals by use of our automated teller machines are limited to 3 per day, and may not total more than $200 per day.

6. CHARGES

There will be no charge for use of your XYZ card, unless the balance in any of your accounts falls below $100. If it does, the charge will be 10¢ per transfer.

7. WRITTEN RECORDS

You will receive the following information about your account and the transfers you make:

a. A receipt describing transfers made at electronic terminals.
b. A monthly statement showing the status of your account, the transfers made, and any charges imposed.

If you have authorized a deposit in advance that is scheduled to occur at least once every 60 days, such as deposit of your wages or Social Security benefits, we will send you a notice if the deposit is not made as scheduled.

8. OUR LIABILITY

If we fail to transfer funds according to your instructions, we will be liable for damages directly caused by our failure unless (1) there are insufficient funds in your account through no fault of ours, (2) the funds in your account are subject to legal process, or (3) the failure was due to an equipment breakdown you knew about when you started the transfer or was caused by an act of God or other circumstance beyond our control.

9. STOPPING AUTOMATIC PAYMENT

If you have given advance authorization for payments to be made from your account, you may stop any transfer by notifying us at least 3 business days before the transfer is to occur. If, after being properly notified, we fail to stop the transfer, we will be liable for any damages directly caused by our failure.

10. PRIVACY

We will not disclose information about your account, or the transfers that you make, except:

a. as necessary to complete transfers;
b. to verify the existence and good standing of your account with us upon request of a third party, such as a credit bureau;
c. to comply with court and government orders; and
d. in accordance with your written authorization.

EXHIBIT B

Information About Direct Deposits of Your Wages or Social Security Benefits

Account # _____

HOW TO CONTACT US

To contact us about your account, call or write:

XYZ Bank
P.O. Box 000
Anytown, Ohio 44000
(444) 666-8888

WRITTEN RECORDS

If direct deposits are made to your checking account, they will be shown on your regular monthly statement. If direct deposits are made to your savings account, we will note them in your passbook when you present the book at any of our offices.

We will notify you if a deposit does not arrive as scheduled.

ERRORS

If you believe that there is an error in the direct deposit shown on any of the account statements or receipts that you receive, call or write us within 60 days after the statement or receipt was sent to you. Give us your name and account number, an explanation of the error, and the amount of money involved. We will look into the matter, and will try to call or write you with an answer within 10 business days. If our investigation takes longer, we will credit your account within those 10 business days with any amount you believe to be in error, and will correct any error no later than 45 days after you first contacted us. If we conclude that no error occurred, you will receive an explanation from us and, if you ask, we will also send you copies of all records we relied on in reaching our conclusion.

PRIVACY

We will not disclose information about your account except:

a. as necessary to complete deposits;
b. to verify the existence and good standing of your account with us upon request of a third party, such as a credit bureau;
c. to comply with court and government orders; and,
d. in accordance with your written authorization.

These forms demonstrate that the disclosures required by this bill would be clear and informative. And because these forms are relatively short and could be printed in advance, compliance would not be burdensome or costly to financial institutions.

This section also provides flexibility as to when disclosures would be made by leaving the precise timing of disclosures to the Board's regulations. Generally, full disclosure of EFT rights and responsibilities would be made when a consumer signs up for a new EFT service. However, when a consumer authorizes his employer to deposit his wages electronically, the Board may find that disclosures by the consumer's bank are practical only after the first deposit is received.

The committee believes that consumers can make meaningful choices as to various banking services only when adequately informed as to their options. These disclosures will provide important information for consumers using or considering an EFT service.

Finally, the bill requires 21 days prior written notice to the consumer if his liability or cost would be increased, except where a change is immediately necessary to respond to a breach of system security.

Section 906.—Documentation of transfers; periodic statements

This section requires that a receipt be made available to a consumer for each EFT transaction initiated at an electronic terminal. This would require that receipts be available for automated teller machine and point-of-sale transfers either by issuing a receipt for every transaction automatically or only when the consumer depresses a button asking for one. Receipts would not be required for pay-by-phone or automated clearing house transactions where the expense of providing a receipt would nullify the cost savings of these services.

The receipt required to be available by this section would set forth the amount, date, and type of transfer, the consumer's account number,

the identity of any third party involved in the transfer, and the location or identification of the terminal involved (which could be done by a code referring to a list of terminal locations printed on the receipt).

In addition to transfer receipts, the bill provides for regular account statements detailing EFT activity for each month in which an EFT transaction occurs, or quarterly. These statements would provide the same information with regard to each transfer as a receipt, and would also include the account's opening and closing balances, any charges for transfers or acount maintenance, and an address and telephone number for the consumer to refer account inquiries or errors. An exception to the periodic statement requirement is made for passbook accounts which are accessed only by direct deposits of payroll, social security benefits and the like. For these accounts, no periodic statement is required if, upon presentation of the passbook, the consumer is given the amount and date of each transfer involving the account since the passbook was last presented.

This section provides an important protection for persons who receive payments, like wages or pension benefits, by direct deposit. In these cases, the bill specifies alternative procedures, each of which would insure that a consumer is notified promptly that his account has or has not been properly credited as scheduled. First, the payor could provide prompt positive notice of each payment made. Second, the consumer's financial institution could adopt a positive notice system whereby each credit is reported promptly to the consumer when received. Or, finally, the consumer's financial institution could establish a negative notice system whereby the consumer would assume that his funds were properly credited as scheduled unless the financial institution promptly notifies him to the contrary. Either of these procedures would satisfy the notice requirements of this subsection regarding preauthorized credits.

As the amount of some payments may vary, and payments may stop without notice to the consumer's financial institution if a consumer changes employment, the bill gives the Board discretion to set reasonable standards triggering notice to the consumer.

Finally, this section provides that a receipt or periodic statement indicating a transfer to another person, including the consumer's bank, shall constitute prima facie proof that such transfer was made. This will provide the consumer with the same evidence of payment for income tax or other purposes as a cancelled check.

Section 907.—Preauthorized transfers

This section sets minimum safeguards for consumers who arrange for regular payments (such as insurance premiums or utility bills) to be deducted automatically from their bank accounts.

The bill requires that any authorization for automatic payments be in writing with a copy provided to the consumer. A consumer is given the right to stop payment on a preauthorized transfer by notifying his financial institution orally or in writing up to 3 business days before the scheduled date of transfer. In the case of an oral notice, the financial institution may require written confirmation within fourteen days.

Where automatic deductions will vary in amount, such as for utility bills, the payee or the consumer's financial institution would be required to provide reasonable advance notice to the consumer of the

amount and date of the scheduled transfer. This advance notification will enable the consumer to arrange to have adequate funds in his account to cover the payment or to stop payment if he chooses.

The safeguards provided by this section correspond to general automated clearing house practices today and will not result in any added cost or operating burden for financial institutions.

Section 908.—Error resolution

This section establishes a procedure for the prompt correction of EFT account errors. This is particularly important in the EFT context because a computer error could leave the consumer's bank account empty or with insufficient funds to cover outstanding checks or meet essential living expenses.

The bill establishes 10 business days as the maximum period of time the consumer would wait to regain use of his funds. A financial institution could take longer (up to 45 days) to investigate and correct an error, providing it provisionally recredits the consumer's account for the amount alleged to be in error within the 10-business-day period.

While a consumer may notify his financial institution of an error orally, the financial institution may request written confirmation of the alleged error within 14 days.

If, after its investigation, the financial institution concludes that no error occurred, it is required to explain its findings to the consumer within 3 business days and, on the consumer's request, provide copies of the documents on which it relied.

This section also provides a substantial penalty if a financial institution concludes in bad faith that no error occurred and does not recredit the consumer's account. A financial institution would be liable for three times the amount of an error if it knowingly and willfully notified the consumer that no error occurred when this conclusion could not reasonably have been drawn from the evidence available or where it failed to provisionally recredit the consumer's account and did not make a good faith investigation of the error or did not have a reasonable basis for believing the consumer's account was not in error.

Section 909.—Consumer liability for unauthorized transfers

This section limits a consumer's liability to a maximum of $50 if an EFT card is lost or stolen and the consumer's bank account is drained. If the consumer notifies the financial institution of the loss before $50 is withdrawn, the consumer's liability would be the amount withdrawn up to the time of the notice.

This standard of liability is similar to the Federal credit card liability standards in effect since 1969. By making the consumer liable for the first $50 withdrawn, the consumer is given a financial incentive to guard his card and access code carefully and report their loss promptly. By requiring the financial institution to absorb any further loss, it has an incentive to minimize the risk of unauthorized uses by tightening an EFT system's security.

This $50 limit would apply only to bona fide unauthorized uses as defined in section 903(11). Thus, if the consumer authorizes another to make a transfer, if the consumer benefits from a transfer or if the consumer is engaged in fraudulent conduct, the $50 limit would not apply, and the consumer would be fully liable. Where a consumer entrusts a card to someone else who then exceeds his actual authority,

the consumer would be fully liable until he notifies his financial institution that use of the card is no longer authorized. Finally, if a consumer receives a periodic statement showing an unauthorized transfer and fails to notify his financial institution within 60 days after transmittal of the statement (or longer, in extenuating circumstances), the consumer would be fully liable for any further unauthorized transfers occurring outside the 60 day period if the financial institution establishes they could have been prevented by such notice. However, an error by a financial institution would not be considered an unauthorized transfer, but would be resolved in accordance with section 908's provisions, under which a consumer would bear no liability.

The committee believes that the dollar ceiling approach to limiting liability for unauthorized transfers presents the best balance of risk allocation while also protecting the consumer from losing his entire bank account. This standard has worked well for credit cards since 1969 and appears to be working equally well in seven States (Wisconsin, Iowa, Colorado, Minnesota, Montana, New Mexico, and Kansas) which have adopted it for EFT.

Some EFT services may provide for a limited overdraft credit feature similar to that now available for checking. The bill provides that where an unauthorized transfer is both a transfer of the consumer's funds and a draw on an overdraft line of credit, the transfer shall be regarded as one transaction and a single $50 limit shall apply.

Section 910.—Liability of financial institutions

This section establishes a financial institution's liability to its customer where it fails to make a transfer as ordered or transfers an incorrect amount.

This section would set the same standards of liability for financial institutions in EFT that now apply to checking under the Uniform Commercial Code.

A financial institution would generally be liable for all proximate damages where it fails to make a transfer in the correct amount or in a timely manner, except where it acted in accordance with account terms or where the consumer's account had insufficient funds or was subject to a legal encumbrance. General liability for proximate damages would also apply if the financial institution failed to make a transfer due to insufficient funds where the financial institution failed to credit a deposit in accordance with account terms. Finally, a financial institution would be similarly liable where it failed to stop payment on a preauthorized transfer when properly instructed by the consumer. A financial institution's liability would be reduced to actual damages, however, where its action was a bona fide error which occurred despite procedures to avoid such errors.

A financial institution would incur no liability (except for failure to stop payment) where its action or omission was due to an act of God or other circumstance beyond its control or a technical malfunction known to the consumer at the time he attempted to initiate a transfer.

Section 911.—Issuance of cards or other means of access

This section governs the issuance of EFT cards and access codes.

Generally, a financial institution would be prohibited from distributing a card and code on an unsolicited basis. However, a financial institution may distribute an unsolicited card or code provided it is not

"activated" for use except on the consumer's request and after verification of the consumer's identity. Thus, a financial institution could mail an unsolicited card or an unsolicited card and access code, provided that the consumer's account could not be accessed by these devices without an affirmative request by the consumer and some verification of the consumer's identity, as specified in the Board's regulations. In addition, the distribution would have to be accompanied by a full disclosure of the consumer's rights and liabilities if the service is accepted and instructions of how to dispose of the card or code if not desired.

This section is intended to permit financial institutions to develop a sufficient card base while also protecting a consumer's account from unauthorized access by a thief who has intercepted the consumer's mail. The committee expects the Board to assure that adequate safeguards are provided to verify the consumer's identity before a financial institution may activate a card and code.

Section 912.—Suspension of obligations

This section provides that a consumer's obligation is "suspended" when a system malfunction prevents completion of an EFT transaction to a person who has agreed to accept payment by such means. This suspension would cease, however, if the intended payee subsequently requests payment by another means in writing.

This provision parallels a similar provision of law applicable to checks, whereby a payor's obligation is suspended during collection of the check.

This protection will assure that mortgages, insurance policies, and other important obligations are not declared in default due to late payment caused by a system breakdown.

Section 913.—Compulsory use of electronic fund transfer

This section contains prohibitions on compulsory use of EFT services which are designed to assure the EFT develops in an atmosphere of free choice for the consumer.

First, an extension of credit could not be conditioned on a consumer's repayment by means of preauthorized (automatic) transfers. While a creditor could not offer only loans repayable by EFT, this section would not prohibit a creditor from offering a lower annual percentage rate to consumers who repay by EFT. This lower rate would have to reflect the cost savings of EFT to the creditor, however, and could not be set artificially so as to induce EFT repayment.

This provision also prohibits requiring a consumer to establish an account with a particular financial institution as a condition to employment or receipt of a government benefit.

Section 914.—Waiver of rights

This section provides that no writing may contain a waiver of a consumer's rights or remedies under this act, except where such a waiver is in settlement of a dispute or litigation. A contract or other writing could, however, grant a consumer greater protection than contained in this act.

Section 915.—Civil liability

This section gives the consumer the right to sue when he is subjected to a violation of the act. Except where a financial institution has an adequate defense, as discussed below, the consumer would be

entitled to actual damages, a penalty of $100 to $1,000, and attorney's fees and costs. In determining the penalty, a court is required to consider several factors, such as whether the violation was intentional and the nature of the violation.

There are five defenses provided in this section which would relieve a financial institution of any civil liability. First, a financial institution would be relieved of liability if it shows that its violation was unintentional and resulted from a bona fide error which occurred despite procedures designed to avoid such an error. A financial institution would also be relieved of liability if it relied in good faith on a Federal Reserve Board interpretation or if it utilized an appropriate model clause promulgated by the Board. A financial institution would be relieved of civil liability if it corrected its noncompliance through the act's error correction mechanism. Finally, a financial institution would not be liable if, prior to suit, notifies the consumer of its violation, complies with the act, and adjusts the consumer's account as necessary, including the payment of actual or proximate damages as required by the act.

The committee believes that a minimum $100 penalty for noncompliance is important principally as a deterrent to noncompliance but also to assure adequate compensation in those cases where the consumer has suffered little or no actual damages but has nonetheless been inconvenienced by his financial institution's violation of the act. The committee also believes that the numerous defenses to civil liability discussed above will assure that this penalty is imposed only in justified situations.

A suit to enforce civil liability may be brought in an appropriate State or Federal court within 1 year of a violation.

This section also provides that where a court finds that an unsuccessful action was brought in bad faith or for harassment, the court shall award the defendant reasonable attorney's fees and costs. This subsection should not be construed as automatically providing for attorney's fees to a defendant in every unsuccessful action. Rather, the committee intends this subsection to apply only in those instances where an action was clearly vexatious and without merit.

Section 916.—Criminal liability

This section provides criminal penalties for deliberate violation of the act and for fraudulent use of an EFT card.

First, any person who knowingly and willfully violates the Act would be subject to a fine of not more than $5,000 and imprisonment of not more than one year.

This section also provides a fine of up to $10,000 and imprisonment for up to 10 years for a series of acts involving the knowing, fraudulent, or unlawful use of a stolen, counterfeit, or altered EFT debit card.

Both provisions are modeled on the criminal provisions of the Truth in Lending Act.

Section 917.—Administrative Enforcement

Enforcement of the act is assigned to the appropriate Federal bank regulatory agencies and the FTC, as in other Federal consumer protection statutes.

With regard to depository institutions, the act would be enforced by the Federal bank regulatory agency which currently regulates the institution. For retailers, finance companies, and others, the FTC would be the enforcing agency.

To assure efficient enforcement, each agency is empowered to utilize its inherent power to the fullest. In the case of the FTC, the Commission would be empowered to curb violations by seeking a restraining order in U.S. district court. The Commission could also request imposition of a fine, but only where a violation was knowing. The committee believes this modernized authority for the Commission, which is identical to its powers under the Equal Credit Opportunity Act and the Fair Debt Collection Practices Act, will permit more efficient utilization of the Commission's resources and more effective enforcement.

Section 918.—Reports to Congress

This section requires the Federal Reserve Board and the Attorney General to submit annual reports to the Congress which include a record of enforcement activities and relevant recommendations. The bill specifically requires the Board to address the act's costs and benefits to consumers and financial institutions and the act's effect on competition, the introduction of new technology, and the Federal judiciary.

Section 919.—Relation to State laws

This section requires the Federal Reserve Board to determine whether a State's EFT law is either inconsistent with this act or more protective for consumers. In the former case, the State law would be annulled; in the latter case, the State provision would continue to apply.

This formula is intended to eliminate minute deviations in State EFT laws and thereby foster the development of national standards, while also permitting the States to enact legislation affording greater consumer protection. While annulling all State EFT laws would produce the benefit of uniform EFT standards in all 50 States, the committee rejected this approach because it would contravene Congress' longstanding policy of deferring to those States which choose to provide more stringent consumer safeguards. Moreover, the committee regards this legislation as setting only minimum national standards.

Section 920.—Exemption for State regulation

This section would permit a State with a substantially similar State EFT law to apply to the Federal Reserve Board to be exempted from the act's provisions. This is a traditional feature of Federal consumer protection legislation which enables State officials to assume primary enforcement responsibility for transactions within their States.

Section 921.—Effective date

The act would become effective 18 months after enactment, except that sections 909 and 911 (consumer liability for unauthorized transfers and issuance of EFT cards) would become effective 90 days after enactment.

The committee regards the prompt enactment of sections 909 and 911 as extremely important. If enactment of these sections were delayed, there is a danger that some financial institutions would rush to distribute unsolicited EFT cards before the act's effective date. Even worse, consumers who received these cards would not have the protection provided by section 909 if a card were lost or stolen. Prompt enactment of these sections would eliminate these dangers and would parallel similar action by Congress when it enacted credit card protections in 1968.

Evaluation of Regulatory Impact

In compliance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact of this bill.

The bill requires the Board of Governors of the Federal Reserve System to promulgate regulations to implement the bill's provisions. The committee believes these regulations would be essential to the bill's overall effectiveness and to provide the flexibility necessary for the continuing development of electronic banking services.

The bill has no impact on the personal privacy of individuals.

The bill has an impact on paperwork to the extent that financial institutions would be required to disclose terms and conditions of EFT services and to provide periodic account statements. However, these requirements correspond to current banking practices.

There is no specific economic impact of this bill, although, by imposing minimal operating standards on EFT systems, some minor economic impact is possible.

There are no recordkeeping requirements imposed by this legislation.

Cordon Rule

In the opinion of the committee, it is necessary to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate in connection with this report.

ADDITIONAL VIEWS OF MR. MORGAN

I have signed the minority views submitted by Senator Schmitt, ranking minority member of the Subcommittee on Consumer Affairs. I am in substantial agreement with those views.

In my judgment, electronic funds transfer legislation runs a serious risk of unduly restricting the development of an embryonic technology with tremendous potential benefit to the American public.

It lays the groundwork for further growth in costly and cumbersome Federal regulation in an industry already overburdened by such regulation, and threatens to repeat the unhappy experience of the Truth in Lending Act by creating unforeseen and unintended difficulties. In short, in the absences of evidence of existing social harm, this legislation is premature. I believe the public interest would be better served by allowing considerably more time for further consideration and increased understanding of the ramifications of the very complex issues addressed by this legislation.

However, I believe that Chairman Proxmire and Senator Riegle and the majority and minority staff of the Subcommittee on Consumer Affairs have worked on this difficult legislation with diligence and dedication. They have made every effort to be attentive and responsive to the concerns of the financial community in a painstaking endeavor to create what they believe to be a reasonable and balanced bill. They deserve the thanks of the committee for their work.

ROBERT MORGAN.

ADDITIONAL VIEWS OF MESSRS. SCHMITT, TOWER, MORGAN, GARN, AND LUGAR

We are concerned that in too hastily enacting EFT legislation, Congress will deny many Americans the convenience of modern payments services at a reasonable cost instead of protecting the consumer against future EFT problems.

The burdensome regulation which would be generated by the committee bill if enacted in its present form, would so load the system as to impede the development of a more efficient and less expensive funds transfer and payments mechanism. This added regulatory burden would tend to stifle competition and inhibit the entry of small business and small financial institutions into this market.

The history of the development of a modern payments system teaches that it would be imprudent to move too rapidly in this area to impose a regulatory straight-jacket on the development of technology.

First, the development of new payments instruments is a slow process. For example, the modern check took about 100 years to evolve.

Second, it is difficult, if not impossible, to predict the final form of a new payments system. For example, the first credit card relied on a script system which proved to be unacceptable to both the customer and the merchant. There subsequently developed the credit card sales slip draft which was less costly and more efficient.

Third, one means of payment does not necessarily supplant another. During the early stages of the development of commercial instruments both the coin and banknote were used interchangeably. The modern consumer now uses currency, checks, money orders and credit cards as a means of payment. Finally, both the consumer and industry have benefitted from the development of new technology. The paper banknote was a much more efficient means of exchange than bars of gold. The modern check is more flexible and convenient than the banknote. Many consumers find the credit card more convenient than the check.

The prudent course would be to go slow with Federal legislation and to permit the States to move forward with experimentation in the area. The Uniform Commercial Code developed by the States provided adequate protection for the consumer in the check system with sufficient flexibility for a continual evolution in transaction technologies: the clearing house, check processing by machine, magnetic ink, computer batch processing, and now, on-line computer processing. The "3–4–8 Committee" of the National Conference of Commissioners on Uniform State Laws presently has under study the desirability of amending articles 3 and 4 of the Uniform Commercial Code to regulate electronic funds transfer transactions not presently explicitly covered under the Code (see Scott, H.S., New Payment Systems: A Report of the 3–4–8 Committee of the Permanent Editorial Board for the Uniform Commercial Code, Permanent Editorial Board of the Uniform Commercial Code, Philadelphia, 1978).

NO NEED FOR IMMEDIATE ACTION

There has been no documentation of abuses that merit the Congress hastily moving forward with legislation in this session of Congress.

The National Commission on Electronic Fund Transfers made the specific finding that to date the consumer has not suffered harm from electronic fund developments. The Commission concluded that the development of EFT within an orderly competitive marketplace would be in the best interest of consumers, providers, and suppliers of EFT systems. Although it did note that there are gaps in the present law in consumer protection which should be filled, this should be done in an orderly manner. The committee bill in very few respects follows the recommendations of the Commission. (The Final Report of the National Commission on Electronic Fund Transfers: EFT in the United States Policy Recommendations and the Public Interest. (October 1977) p. 17)

Most witnesses before the February 24, 1978 hearings before the Senate Consumer Affairs Subcommittee recommended a cautious approach.

Mr. Herb Wegner, Vice Chairman of the National Commission and Credit Union representative, warned that

> There is an even greater risk in the rush to judgment: The risk that premature constraints upon the forces of innovation will retard the advance of technology and force institutions to rely on obsolescent technology.

In the same vein, Mr. Roy G. Green, the savings and loan representative on the Commission, noted that

> My judgment is that EFT is developing slowly and rationally. The marketplace is in the process of sorting out the most cost effective services, and I am not aware of any major consumer-related troubles.

Gordon R. Worley, from retailing cautioned that

> Our problem today is that we do not know in which category most EFT services will eventually fall. To legislate the rules for their existence now would be, in a word, premature.

One of the most knowledgeable witnesses to come before the subcommittee, Hal S. Scott, professor, at Harvard Law School and reporter for the National Commission on Uniform State Laws stated

> Let me end by saying that my work in this area has led me to conclude that we are dealing with an excessively complex subject. I think that means we must take as much time to think these issues through as is consistent with our own estimates of the need for immediate action.

Legislation with regard to consumer protections for EFT was first introduced in the U.S. Senate on September 7, 1977. Only 8 months have elapsed since its introduction. To assume that the best resolution of the issues raised can be generated with such a short gestation period and limited input must be based on a false assumption about the simplicity of the issues being treated. In contrast, the genesis of the Fair Credit Billing Act provides a much better model for the Senate.

The Fair Credit Billing Act provides major consumer protections, which were enacted in a form that did least inadvertent damage to society as a result of misunderstood facts with regard to the activities it governs. That result was reached because of the close coordination between the Senate Banking Committee and those to be affected. This provided the opportunity to thoroughly evaluate, understand and respond to the proposals contained in the Fair Credit Billing Act as originally introduced.

A step in this direction is S. 2740 introduced by Senators Tower and Schmitt to extend the basic protection of the Fair Credit Billing Act to debit card holders. That bill closely follows the recommendations of the National Commission on Electronic Fund Transfers to provide consumers a number of basic rights in an EFT environment without hampering technological advances. Unfortunately, the committee rejected this approach.

COVERAGE ILL-DEFINED AND TOO BROAD

The committee defeated amendments offered to narrow the bill's coverage to debit cards. That at the same time the committee was working to correct difficulties in the Truth in Lending Act, it may be repeating some of the same old mistakes in enacting EFT legislation prematurely. As Professor Johnathan M. Landers, consultant to the Federal Reserve Board, has pointed out, during the process of writing the Truth in Lending Act, the legislators were so preoccupied with debating a number of substantive provisions that creditors found so objectionable and consumerists thought so necessary that little attention was focused on defining the perimeters of coverage. This resulted in an act which according to Professor Landers:

> Left so many uncertainties that this alone may have worked vast expansion of coverage in the form of compliance by persons who are unsure and are unwilling to assume the risk of noncompliance. While one can criticize the foregoing analysis as overtechnical and nit-picking, criticism should be directed mainly against the Congress that has made it necessary rather than the attorney attempting to decipher the statute to make it understandable. (Landers, "The Scope of Coverage of the Truth in Lending Act", 1976 A.B.F. Res. J. 565, 686)

The most serious deficiency in the committee bill is that its overly broad coverage could eventually extend federal regulation into practically every financial institution—large or small—in the country. This overly broad coverage is triggered by the definition in section 903(6) of electronic fund transfer as transactions "initiated through—telephonic instrument, or computer or magnetic tape—." A literal application of this language would mean that any transaction flowing through an automatic clearing house would be covered. An automatic clearing house is a facility which utilizes magnetic tapes and computers to clear debit and credit entries for participating financial institutions. Thus any funds cleared through these computerized systems could be construed to be covered by the committee bill. The fact

that most small institutions do not have computers interfacing with the system but receive paper entries, would not insulate them from coverage because the transfers have been "initiated through—a computer."

The magnitude of this potential coverage is overwhelming. The Automated Clearing House electronic payments delivery system includes 32 regional ACH sites which will be connected by the end of 1978 to form a nationwide network for the exchange of paperless entries.

Figures from the National Automated Clearing House Association, which provides administrative and technical support to regional ACH associations (and through them to participating banks, savings and loan associations and credit unions) show the following level of activity for March 1978:

Participating depository financial institution:
9,379 commercial banks.
1,422 savings and loan associations and credit unions.
Private section volume: 1,452,320 entries.
Government volume: 7,535,070 entries.

Services offered through the ACH mechanism are marketed and serviced by banks and other depository financial institutions of all sizes in virtually all areas of the country. Principle services at this time include automatic deposit of social security and other Federal Governmental retirement payments; automatic deposit of private section payrolls; automatic drafting of recurring debits such as mortgage and insurance premium and utility payments.

This coverage could be devastating to small banks, credit unions and savings and loans which have never considered going into the debit card business and never felt they would have imposed upon them the burdens of this legislation. Although no precise figures are available, because social security payments are delivered to individuals in all regions of the Nation, it may be assumed that even the smallest financial institutions participate in the automatic clearing house activity, at least through this program. Furthermore, the level of automated clearing house participation has been projected for dramatic growth among financial institutions of all sizes in study after study. This expectation is based in the simple fact that the purpose for which the automated clearing houses exist is to provide the capability to deliver payments to all regions of the Nation. One may see for example, that numerous national corporations, whose employees reside in communities of all sizes, the majority of which are serviced by smaller banks and financial institutions, will have the capability to effect significant cost savings by delivery of credits and debits electronically.

Other areas of coverage should be noted.

In an attempt to reach the automatic telephone payments (transfers through a touch-tone telephone and computer network routing instructions to the financial insitution) the committee has also covered incidental telephone instructions by depositor to a teller to make a transfer from a savings account to cover an overdraft or pay a bill. In addition, the language could be interpreted as covering automatic, prearranged transfers from a depositor's savings account to his checking account

at the same institution, as has recently been authorized by the Federal Reserve Board and the Federal Deposit Insurance Corporation. Also, because of the ambiguous language in section 903(2) of the definition of the term "account" there is a question as to whether credit as well as debit transactions would be covered.

COMPLIANCE BURDEN

The significance of the foregoing discussion is that sooner or later practically every financial institution in the Nation both large and small to some degree would be subject to the burdensome provisions of the bill.

Let us look for a moment at the impact the bill could have on a small commercial bank which receives paper entries run through the automated clearing system for the depositing of salary, retirement, social security and insurance payments. Although all accounts of the institution would not initially be involved, prudent management could dictate that because they could be covered in the future, steps should now be taken to bring them into compliance. This would involve an expensive examination of current procedures.

For covered accounts within 30 days of the effective date of the act, the institution would have to send the customer a statement "in readily understandable language" including the terms and conditions of electronic fund transfers involving the account. Because an institution would have a difficult time in determining when a future deposit processed through an automated clearinghouse might be made, it would probably send notices to all accounts to assure that there would be no inadevertent violation of the law subjecting the institution to heavy criminal and civil penalties.

Next, the institution would have to examine the type of transfer documentation and periodic statements that are sent to the customer in light of the new requirements. In all likelihood, the institution would have to revise its periodic statements and documentation forms.

Finally, the institution would have to review its error resolution and dishonor procedures and bring them into conformity with the requirements of sections 908 and 910 of the act.

The most devastating blow to the small institution would be the triggering of the criminal and civil liability provisions for failure to comply with the technical requirements of the legislation. This may create problems of lawsuits similar to the kind which the Truth in Lending Act has engendered.

Studies of compliance costs under the Equal Credit Opportunity Act indicated that the costs of compliance with this bill would be substantial. In a study prepared for the Federal Reserve Board it was pointed out that nonreoccurring costs include:

1. Fees from legal counsel to interpret the regulation, approve new forms, and review various aspects of the regulations with the creditor.
2. Training costs to inform employees about the regulations and their implications for operating procedures.
3. Costs for destroying old forms that can no longer be used.
4. Reprogramming to change computer systems to comply with the new regulations.

Legal fees alone for commercial banks were estimated to be $2.4 million. Given the degree of competition in the market the author concluded that these costs were generally passed along to the consumers. This was broken down into $127.5 million or $1.76 dollars per household in recurring costs every year under the Equal Credit Opportunity Act and $165.8 million or $2.28 per household in one time costs. (James F. Smith, "The Equal Credit Opportunity Act of 1974: A Cost/Benefit Analysis," The Journal of Finance, 609, 612–613, 619, May 1977)

CONSUMER ADEQUATELY PROTECTED UNDER EXISTING RULES

There is a serious question as to whether the consumer needs or can afford the added, so-called "protection" of this legislation. In rules adopted by the National Automated Clearing House Association the consumer is assured that usage of the system must be voluntary; usage must be based upon written authorization of the individual; the individual's right to stop payment must be maintained; there must be freedom of choice of services in institutions; a method of error adjustment must be provided; and paperless transactions must be reported back to the consumer in a descriptive manner. In addition, there is the added protection of the Uniform Commercial Code.

THE BILL INAPPROPRIATELY DELEGATES LAW WRITING AUTHORITY

Section 904 of the committee bill gives the Federal Reserve Board very broad authority to prescribe regulations under the act. Unprecedented authority is given in section 904(d) for the Board by regulation to cover persons other than financial institutions who are offering electronic fund transfer services. If Congress wants to cover service providers other than financial institutions, it should do so in the statute itself and not delegate such broad authority to an outside agency. By the same token, the acts and practices to be regulated should be done so completely within the four corners of the legislation and not be left to an agency which may create new rights and remedies.

Congress is abdicating its responsibility when it delegates to a bureaucracy the writing of the law as here proposed. Much of the regulatory overkill stems from the complicated regulations issued by various government agencies in response to loosely drawn legislation.

The size of this massive burden can be appreciated by recognizing that there are 44 independent regulatory agencies at the Federal level, plus 1,240 boards, commissions, et cetera. These organizations employ over 100.000 individuals responsible for controlling the lives of our citizens. The cost to the taxpayers to finance these bureaucracies is equally large, growing from just over $2 billion in 1974 to an estimated $3,500 million in 1977.

One example may be seen in the Truth in Lending Act delegation of rulemaking authority to the Federal Reserve Board. Pursuant to that authority, the Board has issued a regulation almost three times as long, and almost three times as technical, as the act.

In addition, the Board has issued 64 Official Board Interpretations, 7 of which were later withdrawn and several others amended. The

staff of the Board has issued 145 Official Staff Interpretations and 1,-286 unofficial staff interpretations. That is simply too much for the small businessperson to assimilate and, in fact, too much for any business, whatever the size, to have to master just to avoid highly technical litigation which rarely involves actual damages.

By contrast, under the Fair Credit Reporting Act under which there is no delegation of rulemaking power, there is paucity of litigation and almost no complaints to Congress. Here it is obvious that Congress took the time to decide what it wanted to do and to say what it meant.

THE PREAUTHORIZED TRANSFER MECHANISM IS UNWORKABLE

Section 907 of the bill regulating preauthorized transfers is both unnecessary and unworkable. In this regard, the National Commission on Electronic Fund Transfers stated that

> preauthorized EFT transactions, the Commission believes that consumers should be able to stop or reverse preauthorized EFT debits. Evidence indicates that the marketplace currently enables consumers to do this. Therefore, no legislation is recommended at this time.

If a preauthorized transfer procdure is to be written into law, it should be clear and workable which is not the case with section 907. For example, there is a question whether a stop payment order under the procedure would be received by the financial institution in such time and in such manner as to afford the financial institution a reasonable opportunity to act on it.

The present language of section 907(a) of the committee bill states that a consumer may stop payment of a preauthorized electronic transfer by notifying the financial institution at least three business days prior to the scheduled transfer date. If the word "notifying" is interpreted to include the date on which a request for stop payment is placed in the U.S. mail, as well as when oral advice of such action is made, then there exists the potential for violation of the law by a financial institution which actually receives the communication (i.e., letter) after the scheduled date of transfer. As the drafters of the Uniform Commercial Code were aware, mere insertion of the word "received" in the bill is insufficient to resolve the problem. Usually, a relatively short time is required to communicate to the bookkeeping department a notice of one of these events, but certainly some time is necessary. What was done in section 4–303(1) of the Uniform Comercial Code is the inclusion of an effective time which encompasses the notion of receipt plus a reasonable time for the financial institution to act on any such stop payment communication. Compatibility with Uniform Commercial Code patterns is in itself desirable, so as to integrate new payment system law as much as possible with present payment system law.

Also, section 907(b) requiring a financial institution to give notice of a varying amount in a preauthorized transfer prior to the transfer is unrealistic. The institution has no way of knowing what the varying amount would be until the payment is made. This was pointed out to the committee by the comments of the Federal Deposit Insurance Corporation of April 25 that:

First, the FDIC believes that section 907(b) should be modified to require the designated payee to notify the consumer of the amount of a preauthorized transfer of funds when the amount varies between billing periods. It should not be the responsibility of the financial institution to do so. We agree that such notice must be made far enough in advance to permit the consumer to initiate a stop payment action if the amount is incorrect.

ERROR RESOLUTION PROCEDURE UNFAIR AND UNWORKABLE

The error resolution procedure set forth in section 908 requires that a financial institution which receives oral or written notice of an alleged error by a consumer must complete an investigation within 10 days or, within that time period, recredit the consumer's account for the amount of the alleged error. If the financial institution does not recredit the account within 10 days and a court finds that the financial institution did not have a reasonable basis for disallowing the claimed error, the financial institution would be liable to the consumer for three times the amount of the error. There is no provision in the section for the recovery by the financial institution of the recredited amount if it is later determined that there was no error on the part of the financial institution.

This procedure is replete with problems. First, it is unreasonable to trigger an error resolution procedure to which penalties and sanctions attach on an oral notification. The provision that a written notification be given in 15 days is not helpful because it comes after the time has expired for the recrediting of the account. Under the Fair Credit Reporting Act, a written notice of an alleged error is required. This procedure has worked satisfactorily for both the consumers and the institutions for a number of years. A requirement of written notice would not mean that in all cases a financial institution would require such to be given before it attempts to straigthen the account out. As has been the practice in the credit card area, it would be expected that most consumers and financial institutions would work the matter out over the telephone. The written notice would come into play only when the informal procedure does not work.

It is most unrealistic to require in all cases, as the bill would do, that either the investigation be completed in 10 days or that the account be recredited. A 10-day error resolution period in many cases would be too short, especially since third parties may be involved in the resolution process and their response is beyond the control of the institution. This provision should be no more stringent than the recommendations of the National Commission on Electronic Fund Transfers which allows a customer 60 days to report the error and gives the financial institution 10 days to acknowledge the customer's complaint and 45 days to correct or explain the error.

To require recrediting of the account prior to the completion of the investigation would be giving the consumer a new "right" that does not exist under the present check system. It amounts to giving the consumer a free loan at the expense of other consumers. It also opens the door to fraud. A consumer could claim a $1,000 error and after the account is recredited withdraw the funds and leave the jurisdiction. With the heavy penalties that attach for failure to follow the procedure a financial institution would be reluctant not to recredit the account.

The treble damage penalty provision adds a totally new concept to the enforcement of consumer credit protection laws. The current approach is to provide the consumer with the recovery of either actual damages or where these cannot be established, then a civil penalty of up to $1,000 plus court costs and attorney's fees. Under the Truth in Lending Act this has been more than enough to make it attractive for irresponsible consumers and attorneys to bring law suits for private enforcement of the law. Adding the treble damage feature would be an even greater incentive for harassing law suits.

The provision that an institution has violated the section when it has failed to recredit the account where a conclusion could be drawn from a preponderance of the evidence available to the financial institution at the time of the investigation that there was an error, is too harsh a burden to impose on the institutions. Most consumer credit laws provide a good faith standard to which liability will not attach if it can be shown that the financial institution acted in good faith or that there was a bona fide error. The standards set by this subsection would essentially require business operations of financial institutions to be run under the rules of evidence.

Finally, subparagraph 5 of the section defines an error consisting of "the financial institution's failure to reverse an electronic fund transfer when properly instructed to do so." The committee in other action determined to delete the right of reversibility and the inclusion of this subsection would in effect reinstate that right.

A fair and workable approach would be to follow as closely as is feasible the procedure for error resolution set forth in the Fair Credit Billing Act. This procedure should also incorporate the more reasonable approach recommended by the National Commission on Electronic Fund Transfers.

CONSUMER LIABILITY FOR UNAUTHORIZED TRANSFERS

Section 909 has the effect of making financial institutions an insurer of practically all losses from the theft, loss or unauthorized use of a debit card. Little or no incentive to protect the card or report losses is placed upon the consumer. This is contrary to recommendations of the National Commission on Electronic Fund Transfers that a negligence standard be adopted placing responsibility on the party in the best position to avoid and report losses.

The ultimate effect of this provision would be to compel most prudent consumers in one way or another to pay for the irresponsibility of a few consumers. A number of studies show that the average consumer's checking account is unprofitable for financial institutions. This is forcing the financial institutions and the Federal Reserve to consider the "unbundling" of costs. Losses generated by this burdensome provision would undoubtedly force financial institutions to start charging customers for the debit card service. Another effect would be to restrict the availability of the service particularly to the lower income consumer who to date has not been able to take a step up the economic ladder to enjoy the convenience of a checking account.

LIABILITY OF FINANCIAL INSTITUTIONS

Section 910 providing for liability of financial institutions for failure to make an electronic fund transfer as directed by the consumer is deficient in that it does not allow for security procedures to protect from unauthorized use of a debit card. Credit card issuers have found it necessary to design security systems which limit amounts which can be charged to prevent theft from the use of a stolen card. Since the liability section places almost total responsibility for losses on the financial institutions, it is most important that they be permitted to protect themselves in this new environment.

There is a serious question whether strict liability should be imposed upon the financial institutions as is done by section 910(a). From a functional perspective, the operations of payment systems may, as we enter the EFT era, be increasingly analogized to those of common carriers. Such carriers have traditionally enjoyed liability limitations. Telegraph companies, for example, can validly limit through contract their liability for mistakes made in the transmission or delivery of a message.

Further, the Convention for the Unification of Certain Rules Relating to International Transportation by Air, known as the Warsaw Convention, established a limit on the liability of air carriers in case of an accident involving an international flight. The rationale for a limitation on the liability of air carriers is that the customer is the best party equipped to determine the value of potential losses and to procure appropriate insurance in cases where either the passenger or his or her luggage is extraordinarily valuable. Analogously, the parties to an exceptionally important electronic message arguably should be asked to make special insurance arrangements for coverage in excess of specified limits that would define appropriate enterprise liability. The alternative is for a small institution to find itself with a ruinous liability because of damages proximately caused, as to which it has no knowledge or ability to construct appropriate safeguards.

EFT systems must be constructed to encompass procedures directed at certain assumed risk levels. For example, the security costs of transporting diamonds are much higher than those attributable to transporting potatoes. It could be socially unwise and costly to the public to require railroads to treat all shipments as if they contained diamonds. Similarly, EFT systems should be constructed to handle the risks of commonly conveyed transactions and extraordinarily risky transactions should be identified and insured against or specially treated.

CIVIL LIABILITY

Section 918 in the case of an individual action, where actual damages cannot be established, imposes civil penalty in an amount of not less than $100 nor greater than $1,000 plus costs of the action and attorney's fees. We find the imposition of a $100 minimum civil penalty particularly objectionable because it has been considered a source of frivolous litigation under the Truth in Lending Act. The problem with the minimum civil penalty is that it leaves the courts with very little discretion where they find a technical nonwillful violation. In such cases, some courts have felt they must award a $100 civil penalty plus attorney's fees. The main problem is not the $100 but with the

attorney's fees which even in small cases can run into several thousands of dollars. The Truth in Lending experience under this minimal liability provision has not been a happy one. Over 9,400 suits were filed under truth in lending during fiscal years 1972 through 1977, and new suits are now being filed under it at a rate of over 2,000 per year in Federal district courts alone.

By contrast, under the Fair Credit Reporting Act which has no minimum liability provision, there is a paucity of litigation. Elimination of this $100 minimum would be in keeping with the action taken by Congress in the passage of the Fair Debt Collection Practices Act where there was no minimum civil penalty.

CRIMINAL LIABILITY

Section 916(a) of the bill imposes criminal liability on a financial institution which gives false or inaccurate information, fails to provide disclosures as required by the title, or otherwise fails to comply with the provision of the title.

There is no justification to support this criminal liability section of the bill which makes everything that is in the statute, if not followed, a violation of law punishable in the U.S. district courts. This would expose a businessperson to a fine of up to $5,000 and imprisonment of not more than one year for incorrectly wording a form or failing to give a disclosure as required by the bill. It would give the FBI jurisdiction to investigate every financial institution in the country to determine whether those institutions had complied with the EFT Consumer Protection Code. It's questionable whether the Federal courts or the FBI should be tied up in this kind of trivia and whether the business community should be exposed to criminal penalties for trivial violations.

The Chief Justice of the United States has warned Congress to be mindful of the judicial impact of the enactment of legislation such as this. Congress in effect is creating a whole new series of Federal crimes which are trivial in nature and should not be tried as major misdemeanors in the U.S. district courts.

RELATION TO STATE LAW

Section 919 standard states that a State law is inconsistent with the Federal law if the protection such law affords a consumer is greater than the protection afforded under the Federal law. This is unworkable. Often, there is no way for a private party to determine whether a particular provision of State law offers "greater protection." A State provision may be more advantageous to consumers than a Federal provision in one respect but disadvantageous in others. The determination whether State law offers "greater protection" is even more dfficult when a person bound by the law attempts to determine whether it is the entirety of the particular statutes that are to be compared, or whether each specific provision in those statutes is to be compared separately and a hybrid set of rules, consisting of some details from state law and some from federal law, is to be fashioned.

The legislative process should have a goal the production of well-integrated, coherent and internally consistent principles. The patchwork technique that section 919 would create, which would pull details from disparate statutes and attempt to force them to function as a replacement for a single set of integrated principles, is destructive of that goal. Such a technique destroys the essence of sound policy determination that occurs in the legislative process as workable legislation based on compromise and a statute reasonable in its entirety is produced. Wise policymaking requires a careful balancing which can be achieved only in a statutory scheme in which the legislative body is aware of the totality of the law that will affect the parties covered. Divergent State law principles are not considered by the Congress and, as a practical matter, cannot be in achieving a proper balance.

EFFECTIVE DATE

The committee extended the effective date of the bill to 18 months recognizing that it would take the Federal Reserve at least 9 months to issue regulations and 9 months thereafter for the industry to comply with those regulations, particularly with regard to those provisions requiring disclosures and documentation. It left the effective date for sections 909 and 911 at 90 days apparently on the theory that these sections could be implemented immediately.

This is unrealistic. These sections cannot be separated from the compliance problems attaching to the other provisions of the bill. For example, if the Federal Reserve is given regulatory authority both of these sections will be dependent upon clarification and implementing regulations by the Federal Reserve and until those regulations are issued the financial institution will not know what to do.

CONCLUSIONS

In sum, if enacted in its present form, this overly broad, unnecessarily burdensome legislation would smother the evolution of a more convenient less costly payments system.

The consumer, particularly the low-income American, would be denied easier access to his or her savings. Competition would be stifled and the entry of small institutions and business into the system would be inhibited.

This is a highly complex technical problem which Congress has only begun to grasp. There is no overriding need for immediate action. No significant abuses have been documented either by the congressional committees or the National Commission on Electronic Fund Transfers. To avoid unnecessary regulation which would be costly to both the consumer and industry, we urge the Senate to allow more time for thorough consideration of the complex matters at issue in this legislation.

HARRISON SCHMITT.
JOHN TOWER.
ROBERT MORGAN.
JAKE GARN.
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